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Board of Vocational Nursing
and Psychiatric Technicians

ORIGINAL

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10 **BEFORE THE**
11 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. VN-2002-832

14 **MICHAEL CHABIEL, aka**
15 **MICHAEL JOHN CHABIEL**
423 Garden Court
Tulare, California 93274

A C C U S A T I O N

16 Vocational Nurse License No. VN 200122

17 Respondent.

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19 Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the
22 Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians ("Board"),
23 Department of Consumer Affairs.

24 **License History**

25 2. On or about June 26, 2002, the Board issued Vocational Nurse License
26 Number VN 200122 ("license") to Michael Chabiel, also known as Michael John Chabiel
27 ("Respondent"). The license will expire on March 31, 2008, unless renewed.
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STATUTORY PROVISIONS

3. Section 2875 of the Business and Professions Code ("Code") states, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with Code section 2875) of the Vocational Nursing Practice Act.

4. Code section 118, subdivision (b), states, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under Code section 2892.1, the Board may renew an expired license at any time within four years after the expiration.

5. Code section 2878.6 states, in pertinent part, "[a] plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. . . ."

6. Code section 2878 states, in pertinent part:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, . . .

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

7. Code section 2878.5 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that such use impairs his or

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1 her ability to conduct with safety to the public the practice
2 authorized by his or her license.

3 (c) Be convicted of a criminal offense involving possession of
4 any narcotic or dangerous drug, or the prescription, consumption, or self-
5 administration of any of the substances described in subdivisions (a) and
6 (b) of this section, in which event the record of the conviction is
7 conclusive evidence thereof.

8 **COST RECOVERY**

9 8. Code section 125.3 provides, in pertinent part, that the Board may request
10 the administrative law judge to direct a licentiate found to have committed a violation or
11 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
12 and enforcement of the case.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Criminal Convictions)**

15 9. Respondent has subjected his license to disciplinary action under Code
16 section 2878, subdivision (f), in that Respondent was convicted of crimes that are substantially
17 related to the qualifications, functions or duties of a vocational nurse, as follows:

18 a. On or about February 6, 2006, in the Superior Court of California, County
19 of Tulare, in the case entitled, *People of the State of California v. Michael Chabiel* (Super. Ct.
20 Tulare County, 2006, Case No. TCM153838), Respondent was convicted on his plea of nolo
21 contendere of violating Vehicle Code section 23152, subdivision (b) (Driving While Having an
22 .08% or Higher Blood Alcohol Content), a misdemeanor.

23 b. On or about September 23, 2002, in the Superior Court of California,
24 County of Tulare, in the case entitled, *People of the State of California v. Michael Chabiel*
25 (Super. Ct. Tulare County, 2002, Case No. CR-TR-02-0097945-0), Respondent was convicted on
26 his plea of guilty of violating Vehicle Code sections 23152, subdivision (b) (Driving While
27 Having an .08% or Higher Blood Alcohol Content), and 23578 (Conviction of Violation of
28 23152 or 23153), both misdemeanors.

c. On or about November 9, 1994, in the Municipal Court of California,
County of Tulare, in the case entitled, *People of the State of California v. Michael John Chabiel*

1 (Super. Ct. Tulare County, 1994, Case No. CR-14760-A, Respondent was convicted on his plea
2 of nolo contendere of violating Vehicle sections 23152, subdivision (a) (Driving Under the
3 Influence of Alcohol and/or Drugs and/or their Combined Influence, with 2 Priors) and 14601.2,
4 subdivision (a), (Driving when Privilege Suspended or Revoked), both misdemeanors.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Convictions Involving Alcoholic Beverages)**

7 10. Respondent has subjected his license to disciplinary action under Code
8 section 2878, subdivision (a), on the grounds of unprofessional conduct as defined in Code
9 section 2878.5, subdivision (c), in that Respondent was convicted of crimes involving alcoholic
10 beverages, as set forth in paragraph 9, above.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Use Alcoholic Beverages in a Manner Dangerous or Injurious)**

13 11. Respondent has subjected his license to discipline under Code section
14 2878, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section
15 2878.5, subdivision (b), in that Respondent consumed alcoholic beverages to an extent or in a
16 manner dangerous or injurious to himself, or others, as set forth in paragraph 9, above.

17 **OTHER MATTERS**

18 12. To determine the degree of penalty, if any, to be imposed on Respondent,
19 Complainant alleges that in his Application for Vocational Nurse License, he informed the Board
20 that in the years of 1990, 1992, and 1993, he had been convicted of violating Vehicle Code
21 section 23152 (Driving under the Influence of Alcohol). [Those court records have since been
22 purged.]

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1 PRAYER

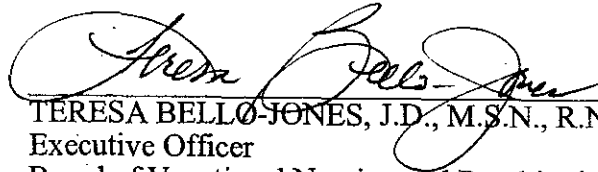
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
4 Technicians issue a decision:

5 1. Revoking or suspending Vocational Nurse License Number VN 200122
6 issued to Michael Chabiel, also known as Michael John Chabiel;

7 2. Ordering Michael Chabiel, also known as Michael John Chabiel, to pay
8 the Board the reasonable costs of the investigation and enforcement of this case pursuant to Code
9 section 125.3; and,

10 3. Taking such other and further action as deemed necessary and proper.
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12 DATED: March 23, 2007

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16 TERESA BELLO-JONES, J.D., M.S.N., R.N.
17 Executive Officer
18 Board of Vocational Nursing and Psychiatric Technicians
19 Department of Consumer Affairs
20 State of California
21 Complainant
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